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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,968	03/07/2005	Albert Gubeli	Q86251	7963
23373 7590 06/12/2008 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER NGUYEN, TUAN N				
ART UNIT		PAPER NUMBER		
3751				
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06/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/526,968

Applicant(s)

GUBELI ET AL.

Examiner

Tuan N. Nguyen

Art Unit

3751

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 14-18 and 22-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date 3/7/2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application.
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Invention of Group I, Species I: Figs. 1-3 in the reply filed on 3/11/08 are acknowledged. The traversal is on the ground(s) that claim 1 is generic. This is found persuasive. Accordingly, claims 14-18 and 22-25 directed to the non-elected invention are hereby withdrawn from further consideration.

The requirement is still deemed proper and is therefore made FINAL.

Information Disclosure Statement

2. The information disclosure statement filed 3/7/2005 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein with respect to the foreign patent document has not been considered.

Specification

3. The abstract of the disclosure is objected to because it should not contain legal phraseology often used in patent claims, such as "means" and "said." Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3751

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5-12, and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,970,527 (hereinafter Martin).

Martin discloses a flushing device comprising a container (14) and at least one pressurized chamber having an actuating device for initiating a flushing process (see col. 3, line 42 et seq.), an outlet valve (about 110) in the lower region of the container and a connecting device for a water pipe (24) for refilling the container (12) with flushing water, characterized in that either a partial flushing process or full flushing process can be carried out. The flushing device further has a power-loaded part (116) which, in the event of a partial flushing process, moves a valve member (about 108) of an evacuation fitting (16) and, as a result, the flushing process is prematurely interrupted. The power-loaded part (116) is displaceable in the evacuation fitting. The flushing device further has control means (26) are provided and, in the event of a partial flushing process, automatically interrupt the flushing process. The control means have a level sensor (about B) which interrupts the flushing process when a predetermined level of the flushing water is reached. The introductory statement of intended use and all other functional phrases have been carefully considered but are deemed not to describe any structure patentably distinguishable over structure that disclosed by Martin which is certainly capable of being used in the claimed manner.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (as discussed above) in view of US Patent 6,550,076 (hereinafter Fish).

Although the power-loaded part of Martin is not spring-loaded in the inoperative position as claimed, attention is directed to the Fish reference which discloses an analogous device having a power-loaded part (30) that is spring-loaded in the inoperative position (see Fig. 3). It would have been obvious to one having ordinary skill in the art to employ, on the power-loaded part of Martin, the spring-loaded as for example taught by Fish to provide a piston returning force.

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (as discussed above) in view of US Patent 5,881,399 (hereinafter Kartoleksono).

Although the device of Martin does not shown to have at least two buttons actuating device as claimed, attention is directed to the Kartoleksono reference which discloses an analogous toilet flushing device having at least two buttons (11, 13) actuating device as claimed. It would have been obvious to one having ordinary skill in the art to employ, on the Martin device, at least two buttons actuating device as for example taught by Kartoleksono by applying a known technique to a known device ready for improvement to yield a dual flushing operation which can obviously be a full flushing process and a partial flushing process.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tuan Nguyen/
Primary Examiner, Art Unit 3751

TN